

Message Text

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ACTION DHA-02

INFO OCT-01 EA-09 ISO-00 IO-11 AID-05 EB-07 CIAE-00

DODE-00 PM-04 H-02 INR-07 L-03 NSAE-00 NSC-05 PA-02

PRS-01 SP-02 SS-15 USIA-15 OMB-01 TRSE-00 DPW-01 /093 W

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R 091150Z MAR 76

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 7542

UNCLAS TOKYO 3548

E.O. 11652: N/A

TAGS: SHUM, PFOR, PINS, PINT, PORC, EAID, EFIN, MASS, JA

SUBJECT: HUMAN RIGHTS: 1976 REPORTING REQUIREMENT

REF: A. STATE 045319

B. TOKYO A-109, MARCH 4, '75

1. THIS REPORT RESPONDS, AS REQUESTED REF A, TO A POTENTIAL REQUIREMENT FOR REPORTING TO THE CONGRESS ON HUMAN RIGHTS IN CONNECTION WITH PENDING SECURITY ASSISTANCE LEGISLATION. OUR RESPONSE TO DEPT'S REQUEST LAST YEAR IS REF B. WE WOULD APPRECIATE KNOWING OUTCOME OF PRESENT MILITARY ASSISTANCE LEGISLATION WITH PARTICULAR REGARD TO FOREIGN MILITARY SALES, FMS TRAINING AND COMMERCIAL PURCHASES--THE ONLY CATEGORIES OF "SECURITY ASSISTANCE" RELATED TO JAPAN.

2. RESPECT FOR HUMAN RIGHTS IS EMBODIED IN JAPAN'S LAWS. AS NOTED REF B, JAPAN'S CONSTITUTION GUARANTEES FUNDAMENTAL HUMAN RIGHTS, AND JAPAN'S VIGOROUS POLITICAL AND MEDIA DIALECTIC PROVIDES FOR THEIR IMPLEMENTATION. ARTICLES 10-40 OF THE 1947 JAPANESE CONSTITUTION ARE REMARKABLY SIMILAR TO THE 26 ARTICLES OF THE 1948 UNIVERSAL DECLARATION OF HUMAN RIGHTS. ACCORDING TO ARTICLE 11 "THE FUNDAMENTAL HUMAN RIGHTS GUARANTEED TO THE PEOPLE BY THIS UNCLASSIFIED

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CONSTITUTION SHALL BE CONFERRED UPON THE PEOPLE

OF THIS AND FUTURE GENERATIONS AS ETERNAL AND INVIOATE RIGHTS." THERE IS NO CONSTITUTIONAL PROVISION FOR A STATE OF NATIONAL EMERGENCY AND NO ATTEMPTS HAVE BEEN MADE TO INVOKE SUCH A STATE. HOWEVER, SUBSIDIARY LEGISLATION, SUCH AS THAT FOR THE NATIONAL POLICY AGENCY, DOES NOT EXCLUDE SUCH A POSSIBILITY. NEVERTHELESS, ARTICLE 98 AFFIRMS "NO LAW, ORDINANCE, IMPERIAL RESCRIPT OR OTHER ACT OF GOVERNMENT CONTRARY TO THE PROVISIONS (OF THE CONSTITUTION) SHALL HAVE LEGAL FORCE OR VALIDITY."

3. THE HABEUS CORPUS LAW OF 1948 PROVIDES AN ORDERED PROCEDURE FOR REDRESS AGAINST RESTRAINT OF A PERSON WITHOUT DUE LEGAL PROCEDURE. CHAPTER XXV OF THE PENAL CODE PROHIBITS ABUSES OF AUTHORITY, OR COMMISSION OF ACTS OF VIOLENCE OR CRUELTY BY PUBLIC OFFICIALS. SHOULD A PUBLIC PROSECUTER DECIDE NOT TO PROSECUTE A COMPLAINT UNDER THIS SECTION, THE COMPLAINANT OR ACCUSER MAY APPLY TO A DISTRICT COURT WHICH MUST RENDER A RULING ON THE COMPLAINT. A RULING OF NO GROUNDS FOR COMPLAINT MAY BE APPEALED TO A HIGHER COURT. IN SHORT, JAPANESE HAVE GUARANTEDD ACCESS TO THE HIGHEST LEVELS OF JUDICIAL PROCEDURE IN SAFEGUARDING THEIR HUMAN RIGHTS.

4. JAPAN'S CITIZENS HAVE A PARTICULARLY STRONG POSITION IN REGARD TO HUMAN RIGHTS VIS A VIS THE POWER OF THE STATE TO DECLARE WAR OR MARTIAL LAW. IT IS NOW POSSIBLE TO DECLARE A STATE OF WAR UNDER THE CONSTITUTION, THE GOJ HAS NOW POWER TO INDUCT CITIZENRY INTO SELF DEFENSE FORCES, AND THE VERY CONSTITUTIONALITY OF THE SDF ITSELF IS PRESENTLY UNDER APPEAL BY THE GOVERNMENT FROM A NEGATIVE RULING BY A LOWER COURT JUDGE. WITHIN THE SDF THERE IS NO POWER TO APPLY MILITARY LAW, OR COURTS MARTIAL, AND A MEMBER OF THE SDF CAN RESIGN WITHOUT PENALTY AT ANY TIME.

5. WE HAVE NO EVIDENCE THAT HUMAN RIGHTS ABUSES
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ARE A SERIOUS POLITICAL ISSUE IN JAPAN, AND WE ARE NOT AWARE OF ANY RESORTS OR FINDINGS BY INTERNATIONAL ORGANIZATIONS WHICH RELECT ADVERSELY UPON THE PERFORMANCE OF THE GOVERNMENT IN THE PROTECTION OF HUMAN RIGHTS. THE GOVERNMENT APPEARS TO ACT WITH A SCRUPULOUS REGARD FOR HUMAN RIGHTS AND UNDER THE CONSTANT SCRUTINY OF A FREE PRESS. AS REPORTED
REF B THERE IS EVIDENCE OF SOCIAL DISCRIMINATION

AGAINST THE MINORITY KOREAN ETHNIC GROUP
(ABOUT 600,000 PERSONS), AND THE
BURAKUMIN OR FORMERLY "UNTOUCHABLE" CASTE (ABOUT
3,000,000 PERSONS). THE GOVERNMENT APPEARS TO
BEND OVER BACKWARD TO PROTECT THE LEGAL RIGHTS
OF THESE GROUPS ALTHOUGH IT HAS NOT EMBARKED ON THE
KINDS OF AFFIRMATIVE STEPS LEGISLATED IN THE US
AIMING TOWARDS FULL INTEGRATION.
SHOESMITH

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: REPORTS, HUMAN RIGHTS, MILITARY ASSISTANCE, ECONOMIC ASSISTANCE, LAW, US CONGRESSIONAL PRESENTATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 09 MAR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976TOKYO03548
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760088-1125
From: TOKYO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760378/aaaacqxs.tel
Line Count: 124
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION DHA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 STATE 45319
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 29 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <29 JUN 2004 by fisherem>; APPROVED <14 DEC 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: HUMAN RIGHTS: 1976 REPORTING REQUIREMENT
TAGS: SHUM, PFOR, PINS, PINT, PORO, EAID, EFIN, MASS, JA
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006